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Letter dated 30 April 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 November 2003 (S/2003/1060). The Counter-Terrorism Committee has received the attached third report from the Niger submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

04-35893 (E) 110604 150604

Annex

[Original: French]

Note verbale dated 27 April 2004 from the Permanent Mission of the Niger to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Niger to the United Nations presents its compliments to the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) and, in response to its note dated 22 October 2003, has the honour to transmit to it herewith the second supplementary report of the Niger on counter-terrorism (see enclosure).

Enclosure*

Supplementary report of the Niger on counter-terrorism

Introduction

This report supplements the previous report submitted to the Counter-Terrorism Committee.

Some questions which could not be addressed in the preceding report will be answered in this report.

They include in particular questions concerning the measures taken by the Government of the Niger with regard to illicit drug trafficking and the hijacking of aircraft.

This supplementary report consists of two parts, dealing with the aforementioned questions.

I. Penalties incurred for drug trafficking and consumption

This matter is covered by Order No. 99-42 of 23 September 1999 concerning the control of illegal drugs in the Niger, which establishes three separate categories:

High-risk drugs

Under this heading there are the following subheadings:

Cultivation, production and manufacture;

International trafficking;

Trafficking;

Facilitating drug use;

Offering or selling for personal use;

Drugs involving risk

Precursors, equipment and material

II. Penalties incurred in the event of the hijacking of aircraft

The penalties incurred also vary following the same distinction:

I. *High-risk drugs* (tables I and II)

A. *Cultivation, production and manufacture*

Under article 94, any person contravening the laws and regulations concerning the export, import and international transport of high-risk drugs is subject to either 10 to 20 years' imprisonment or a fine of 1 million francs, or both.

* Annexes are on file with the Secretariat and are available for consultation.

B. *International trafficking (art. 95)*

Any person contravening the laws and regulations concerning the export, import and international transport of high-risk drugs is subject to either 10 to 20 years' imprisonment or a fine of 1 million to 10 million francs or both.

C. *Trafficking (art. 96)*

Any person contravening the laws and regulations concerning the offering, offering for sale, distribution, brokerage, sale delivery on any terms whatsoever, dispatch, shipping, transport, purchase, possession or use of high-risk drugs is subject to either 10 to 20 years' imprisonment or a fine of 1 million to 20 million francs or both.

D. *Facilitating drug use (art. 97)*

Under article 97, the following persons are subject to either 5 to 10 years' imprisonment or a fine of 500,000 to 1 million francs, or both:

(a) Any person who facilitates the illegal use of high-risk drugs, in return for payment or free of charge, either by providing the premises for that purpose or by any other means. Examples include owner-managers, senior managers and managers of hotels, furnished houses, boarding houses, bars, restaurants, clubs and other establishments;

(b) Any person who knowingly issues prescriptions for high-risk drugs without medical justification;

(c) Any person who fills such prescriptions for high-risk drugs, being aware that the prescriptions are fraudulent or without medical justification;

(d) Any person who obtains or attempts to obtain high-risk drugs through prescriptions which are fraudulent or without medical justification;

(e) Any person who adds high-risk drugs to food or beverages without the consumers' knowledge.

E. *Offering or selling for personal use (art. 98)*

Any person who sells or offers high-risk drugs to another person for their personal use is subject to either 1 to 5 years' imprisonment or a fine of 100,000 to 500,000 francs, or both.

II. *Drugs involving risk (table III) (art. 99)*

Under article 99, any person who contravenes the laws and regulations concerning the cultivation, production, manufacture, extraction, preparation, transformation, importation, exportation, offering, offering for sale, distribution, brokerage, sale, delivery on any terms whatsoever, dispatch, shipping, transport, purchase, possession or use of drugs involving risk is subject to 5 to 10 years' imprisonment or a fine of 1 million to 10 million francs, or both.

III. *Precursors (table IV), equipment and material (art. 100)*

Under article 100, any person who produces, manufactures, imports, exports, transports, offers, sells, distributes, delivers on any terms whatsoever, sends, dispatches, ships, purchases or possesses precursors, equipment and material, either for the purpose of using them for the illegal cultivation, production or manufacture

of high-risk drugs or drugs involving risk or knowing that those precursors, equipment and material would be used for such purposes, is subject to 10 to 20 years' imprisonment or a fine of 1 million to 20 million francs, or both.

It should be noted that:

(1) Direct or indirect incitement to the commission of offences and illegal use of high-risk drugs or substances presented as having the effects of those drugs is punishable by 5 to 10 years' imprisonment or a fine of 500,000 to 5 million francs, or both (art. 102).

However, the prison term incurred shall be 1 to 5 years in the event of incitement to use illegally drugs involving risk or substances presented as having the effects of those drugs.

(2) Attempts to commit the offences referred to in articles 94 and 102 and association or conspiracy to commit such offences are subject to the same penalties as completed offences (art. 103).

(3) Accomplices who knowingly provide the means for, aid and abet, facilitate or counsel the commission of the offences referred to in articles 94 and 102 are subject to the same penalties as the perpetrator of the offence.

(4) Lastly, the penalties provided for in articles 94, 95, 96, 97, 98, 99 and 101 can be imposed even if the various acts constituting the elements of the offence were committed in different countries (art. 106).

1. Concerning the first question, articles 391 and 399 of the Criminal Code of the Niger contain provisions criminalizing the hijacking of aircraft. According to resolution 1373 (2001), paragraph 1 (c), States are to freeze without delay funds and other financial assets or economic resources of persons or entities that commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, regardless of the source of the funds. These measures have been taken into account by the Government of the Niger in Regulation No. 14/2002/CM/UEMOA on the freezing of funds and other financial resources in the context of combating terrorism in the States of the West African Economic and Monetary Union (ECOWAS).

2. Concerning the legal provisions in force regulating other money transfer agencies or services, the Niger has taken steps to incorporate that aspect of Security Council resolution 1373 (2001) into its national legislation by submitting for adoption by the National Assembly the ECOWAS uniform Act on Money-Laundering, articles 4 and 5 of which (title I, sole chapter) deal with financial institutions.

3. Currently there are no provisions concerning alternative money transfer systems such as *hawala*. However, following the legislative workshop in Tunis organized by the Legal Department of the International Monetary Fund and the United Nations Office on Drugs and Crime, a bill on the suppression of the financing of terrorism is being studied at the ministerial department level and will soon be submitted to the Government for consideration. This bill contains provisions intended to ensure that funds and other resources collected by religious, charitable and cultural organizations are not diverted to purposes other than their stated purpose, in particular the financing of terrorism.

4. Regarding the implementation of subparagraph 2 (a) of resolution 1373 (2001), the Niger has always, in the context of the aforementioned bill, provided for the suppression of recruitment of persons in its territory with a view to joining terrorist groups operating either inside its territory or abroad.

5. The supply of arms to terrorists may be linked to the regulations on trading in and carrying of weapons, offences provided for and punishable under the new articles 298, 299 and 300 of the Criminal Code of the Niger, which address, respectively, the carrying, possession, importation, transfer, sale and transport of arms, explosives or munitions in the territory of the Niger.

6. The Niger intends to incorporate in its domestic legal order, within the framework of the bill on suppression of the financing of terrorism, the provision of Security Council resolution 1373 (2001) calling on States to deny safe haven to those who finance, plan, support or commit acts of terrorism.

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Letter dated 30 April 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 28 January 2004 (S/2004/90). The Counter-Terrorism Committee has received the attached fourth report from Paraguay submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

04-34892 (E) 150504 210604

Annex

[Original: Spanish]

Letter dated 26 April 2004 from the Permanent Representative of Paraguay to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

As requested in your note dated 16 January 2004, I have the honour to transmit the fourth report of Paraguay pursuant to Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Eladio **Loizaga**
Ambassador
Permanent Representative

Enclosure

Fourth report of the Government of the Republic of Paraguay pursuant to paragraph 6 of Security Council resolution 1373 (2001)

1. Regarding the criminalization of terrorist financing and the prosecution of offenders;

Ongoing legislation: The Counter-Terrorism Committee (CTC) has noted in Paraguay's second report that the consideration of a new bill on combating terrorism, which had been before Parliament since December 2001, has now been postponed "sine die" (see p. 3 of the second report).

Taking into consideration that most of the provisions needed for Paraguay to be in compliance with resolution 1373 (2001) depended on the adoption of this bill, in particular, inter alia:

- **The criminalization of terrorist acts and their financing (p. 3, second report);**
- **The use of territory by terrorist organizations (p. 6, second report);**
- **The ratification of several international conventions against terrorism (p. 8, second report);**

The CTC wishes to know how Paraguay intends to deal with this matter and what steps it proposes to take to comply with the provisions of the resolution.

Reply

The Government of the Republic of Paraguay is fully aware of the importance the international community attaches to adopting and implementing legislative and practical measures aimed at effectively and uncompromisingly combating the global scourge of terrorism, which to date still shows that it does not respect frontiers or religious or ideological beliefs and that it indiscriminately attacks the civilian population, as has again been shown in the tragic attacks of 11 March 2004 in Madrid, Spain.

At present, consideration of the preliminary draft anti-terrorism act by the National Congress has been suspended, and its approval is thought to be unlikely in the short and medium terms owing to the resistance it encountered at the time of its proposal at all levels of Paraguayan civil society, and in the press in general, as it was associated with other legislative instruments that resembled those of the period from 1954 to 1989 in which an authoritarian regime governed Paraguay. Like the preliminary draft act, the previously established provisions concerned the creation of special courts within the judiciary to try terrorism-related offences. It also established other provisions that, at the time of their submission to the legislative authorities, were considered to violate basic human rights with regard to individual freedom.

Nevertheless, the Government of Paraguay still considers the effective combat of terrorism to be a high priority and, as irrefutable proof of that position, encloses for the attention of the Counter-Terrorism Committee a copy of the most recent

international instruments that have been adopted by the Republic of Paraguay. These include the Inter-American Convention Against Terrorism, which was opened for signature in June 2002 in Bridgetown, Barbados, and was ratified by the Paraguayan National Congress by means of Act No. 2302 of 7 November 2003. It is anticipated that the instrument of ratification will be deposited as soon as possible.

In view of the foregoing, the Government of the Republic of Paraguay appeals to the relevant authorities of the Counter-Terrorism Committee for understanding and patience with regard to the delicate political and social circumstances that surrounded and still surround the approval of the preliminary draft anti-terrorism act. At the same time, the Government commits itself to continue working with the relevant authorities of both Paraguayan civil society and the National Congress to raise awareness of how important it is for Paraguay to adopt this preliminary draft act.

Freezing of funds: Subparagraph 1 (c) of the resolution requires, inter alia, that States freeze without delay funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. Paraguay, however, indicates in its second report (p. 4) that "The Paraguay Penal Code contains no legal definition for the freezing of funds". Furthermore, it does not appear that the existing provisions called "*embargo*" and "*comiso*" have the same effect as does the freezing of funds. Consequently, the CTC would be grateful to be informed about the intentions of Paraguay in this regard.

Reply

The draft amendment to Act No. 1015/97 provides for the incorporation of the concept of "preventive attachment or freezing of funds" into Paraguayan law; this concept means the "temporary prohibition of the transfer, conversion, conveyance or movement of property, instruments or goods", with a view to having an effective tool to prevent both lawful and unlawful funds being used to finance terrorist acts and money- and/or property-laundering.

This measure, or another precautionary measure, may be taken by a criminal court judge or competent court at any time, even before a charge is brought against an individual or individuals, and may be processed either by the judge on his own initiative or at the request of the Public Prosecutor's Office. The measure is aimed at maintaining the availability of the property, goods or instruments of the punishable offence or of a previous unlawful act.

In addition to the concept of "preventive attachment or freezing of funds", there are other concepts such as the "seizure and confiscation of property" and their modes of application are also being modified by the draft amendment as follows:

Article 8 has the following addition: "At any time, even before an accusation has been made, criminal court judges or competent courts may order, on their own authority or at the request of the Public Prosecutor's Office, the seizure, preventive attachment or repatriation of property, articles or instruments, or any other precautionary measure, aimed at maintaining property, articles or instruments pertaining to a money-laundering offence, or a related offence, available for possible confiscation. At the request of a foreign State, in accordance with the international conventions and treaties to which the Republic is a party, criminal court judges and competent courts may order the seizure, preventive attachment or confiscation of

property, articles or instruments that lie within their jurisdiction and that might be related to a money-laundering offence or a related offence committed in the requesting State."

Furthermore, the amended article 9 provides as follows: "If any of the property, articles or instruments pertaining to a money-laundering offence, or a related offence, cannot be confiscated, the criminal court judges or competent courts shall order the confiscation of any other property of the convicted person of an equivalent value. If this special confiscation is not possible, the payment of a fine equivalent to the value of the property, articles or instruments shall be imposed."

Regarding the protection of the economic and financial system:

Effective implementation of paragraph 1 of the resolution requires that financial institutions and other intermediaries should be under a legal obligation to report suspicious transactions. The CTC would appreciate further information concerning legislation that Paraguay has in place in this regard. In particular, the Committee would be grateful to receive clarification as follows:

(a) What criteria are used to determine whether transactions are to be characterized as unusual?

(b) Is a requirement to report suspicious transactions imposed on financial intermediaries, such as real estate agents, lawyers and accountants?

(c) Does the obligation to report suspicious transactions relate solely to the prevention of money-laundering activities or does it also extend to transactions linked to the financing of terrorism?

(d) The CTC would appreciate receiving more details about how the reporting mechanism operates in practice. In particular, the CTC is interested in learning the number of suspicious transactions which have been reported to SEPRELAD in recent years. How many transfers have in fact been frozen after they have expressed doubts in relation to certain transactions?

(e) What are the penalties for non-compliance with the requirements to report suspicious financial transactions? How many convictions, if any, have occurred in the past three years?

Reply

(a) Under article 19 of Act No. 1015 of 1997, which has been mentioned in previous reports to the Counter-Terrorism Committee, entities required to do so must report any act or transaction, irrespective of the amount, where there is an indication or suspicion that they are related to money- or property-laundering. The following transactions shall be considered especially suspicious:

- Those that are complex, unusual, large or that do not correspond with normal transaction patterns;
- Even if they are not relatively large, those that are carried out periodically, without legal or reasonable grounds;
- Those that do not correspond, owing to their nature or volume, with the asset and liability transactions of clients in respect of their professional or commercial activities or their transaction history;

- Those that without due cause involve cash deposits by a large number of persons.

However, article 23 of the draft bill amending Act No. 1015, which is due to be presented to National Congress as soon as possible, provides as follows: "**entities required to do so must report any act or transaction, irrespective of the amount, where there is an indication or suspicion that it pertains to money- or property-laundering, a related offence, or to terrorism, terrorist acts or terrorist groups.**"

(b) Regarding item (b), only real estate agents are obliged under Act No. 1015 to report suspicious transactions. Accountants and lawyers are not obliged to do so, as they are not considered entities required to report suspicious transactions. However, article 17 of the draft amendment to the above-mentioned Act stipulates that "**natural and juridical persons referred to in this Act, and specified in its general regulations, are obliged to inform the Secretariat for the Prevention of Money- or Property-Laundering about any acts, transactions or operations of a suspicious nature that they may notice while carrying out their activities and to comply with the rules of this authority.**"

From the amended regulations it can be deduced that the legal obligation to report such transactions applies not only to real estate agents but also to lawyers and accountants.

(c) Article 19 of Act No. 1015 states that the obligation to report or denounce suspicious operations or transactions applies to any act where there is an indication or suspicion that it is connected to money- or property-laundering. Article 4 (h) of the proposed amendment to the above-mentioned preliminary draft provides that "money- and property-laundering are considered punishable offences when a person, through actions or omissions, converts, invests, transfers, carries out any financial transaction with, or transports property, articles or funds that have been collected, provided or intended for the promotion of terrorist acts when that person knows, or should know, that the licit or illicit property, articles or funds have been collected, provided or intended for the promotion of terrorist acts, the encouragement of terrorist acts or the financing of terrorists acts."

(d) The reporting mechanism operates in practice through the Secretariat for the Prevention of Money- or Property-Laundering (SEPRELAD), and criminal prosecutions are made through the Department of Economic Crimes, a division of the Public Prosecutor's Office. The number of suspicious transactions or operations that have been reported to both authorities in recent years are as follows:

2000: 50 reports; 2001: 52 reports; 2002: 46 reports; and 2003: 79 reports.

It should be noted that no transfer or other type of financial transaction related to reported or denounced suspicious operations or transactions was subject to a freezing of assets, as this concept was not provided for by Act No. 1015.

(e) The sanctions imposed in relation to failure to report suspicious financial transactions are provided for by Act No. 1015 and are as follows:

- A written warning;
- A public reprimand;

- A fine of between 50 and 100 per cent of the total amount of the transaction by which the offence was committed;

- A temporary suspension of activities for 30 to 180 days.

In addition to the sanctions mentioned, the draft bill amending Act No. 1015 states: "**The Secretariat for the Prevention of Money- or Property-Laundering (SEPRELAD) will submit records to the Public Prosecutor's Office so that it may instigate criminal proceedings if the entities required to report do not comply with obligations that they are aware of, or should be aware of, as set forth in this chapter of the preliminary draft.**"

Finally, the sentencing of four persons on 2 April 2004 in the United States of America to 4 to 10 years' imprisonment should be mentioned, although the sentences were not specifically for money- or property-laundering. These persons included a former director of the Central Bank of Paraguay and a former Banking Superintendent, who were tried for diverting funds from insolvent banks, which were in the process of being liquidated, to so-called "high return funds".

Controls on preventing access to weapons by terrorists

Subparagraph 2 (a) of the resolution requires each Member State, inter alia, to have in place appropriate mechanisms to deny terrorists access to weapons. In this context, the answer given by Paraguay in its second report (p. 7) does not clarify which laws regulate the acquisition and possession, import and export, of such weapons. The CTC would appreciate receiving this clarification, along with an outline of the main provisions.

Reply

Act No. 1910 of June 2002, on "Firearms, ammunition and explosives", is the legal instrument that regulates all matters relating to such weapons, as established in article 1, which states: "**The objective of this law is to state the rules and requirements for owning and carrying firearms, ammunition, gunpowder, explosives and related materials; to classify firearms; to establish rules for the issuance, renewal and suspension of permits; to establish the competent authorities and conditions for importing and exporting such weapons, ammunition and explosives; to set rules for gunsmith's workshops and factories producing pyrotechnic articles, for shooting and hunting clubs, for collections and collectors of firearms and for private security services; to establish the circumstances in which firearms are seized and confiscated; and to set rules for registering and returning such weapons.**"

Act No. 1910 of 2002, which regulates all matters relating to firearms, ammunition and explosives, is fully in force in the Paraguayan legal system and has even been the object of a specific regulation that will soon be published by means of a corresponding executive decree and that will regulate clearly and unequivocally any interpretative loopholes that might have arisen after the Act came into force.

The requirements stipulated in the Act for possessing arms for civilian use (so-called military weapons are for the exclusive use of the armed forces and police) are as follows:

(a) **For natural persons:**

- Age of majority (18 years old)
- Completion of a special form, including a photocopy of the national identity document, a certificate stating that the person does not have a legal or criminal record and a medical certificate of psychological aptitude for the use of firearms that has been legalized by the Ministry of Public Health and Social Welfare.

(b) **For juridical persons:**

- Completion of a special form, including a Certificate of Legal Existence and Representation and also a photocopy of the national identity document of the legal representative of the entity.

The rules for importing arms for civilian use provide that:

(1) The importer must be registered at the War Material Directorate and must keep the registration up to date.

(2) A written request to import material must be made, enclosing the catalogue and pro forma declaration of the articles to be imported.

(3) On the basis of the reports of Importation Department, Information Technology Department and the Office of the Legal Counsel, the corresponding ruling is given, authorizing or prohibiting the importation of such weapons.

It is very important to emphasize that in the regulations of the Act "**the ban on sales to tourists and persons in transit in the Republic of Paraguay**" is specifically stipulated; this virtually eliminates the possibility that terrorist individuals or groups might gain access to such weapons. Furthermore, a specific permit from the competent Paraguayan authority in firearms, the armed forces' War Material Directorate (DIMABEL), is required in order to purchase a weapon. The regulations stipulate that the permit must be obtained before the purchase takes place.

Finally, it should be mentioned that the Act classifies firearms as military weapons or weapons for civilian use, providing in article 5 of Act No. 1910 that "**military weapons are for the exclusive use of the armed forces and the police, and their design, calibre and other technical specifications will be established in a regulatory decree passed by the executive branch**". The possible acquisition and possession of such weapons is therefore totally restricted to persons who do not belong to either the armed forces or the police.